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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re A.M., a Person Coming Under the
Juvenile Court Law.

2d Juv. No. B214739
(Super. Ct. No. J-1251877)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Plaintiff and Respondent,

v.

T.M.,

Defendant and Appellant.

T.M. ("Father") appeals an order of the juvenile court declaring that his daughter is adoptable and terminating his parental rights. (Welf. & Inst. Code, § 366.26, subd. (c)(1).)¹

FACTS AND PROCEDURAL HISTORY

On April 3, 2007, Santa Barbara County Child Welfare Services ("CWS") filed a dependency petition on behalf of newborn A.M. CWS alleged that A.'s mother ("Mother") did not obtain adequate prenatal treatment and that she was involved in domestic violence with Father. CWS also alleged that Mother has a history of substance

¹ All further statutory references are to the Welfare and Institutions Code.

abuse and, in 2004, lost parental rights to her older children. CWS did not know the whereabouts of A.'s alleged father. (§ 300, subds. (b), (g), (j).)

The juvenile court detained A., ordered that she be placed in licensed foster care, and ordered that Mother receive family reunification services. On May 21, 2007, the court sustained the allegations of the amended dependency petition and continued A. in foster care.

Father then appeared in the proceedings and submitted to a paternity test. Based upon test results, the juvenile court entered a judgment of paternity on July 5, 2007, and ordered CWS to provide family reunification services to Father.

The family reunification services plan for Mother required her to participate in and complete domestic violence counseling, substance abuse treatment, random drug testing, and parent education, among other things. Father's reunification services plan required him to participate in and complete a domestic violence program and parent education program. The plan also required Father to maintain a stable and suitable residence that is drug- and alcohol-free.

At the November 29, 2007 six-month review hearing, CWS recommended that the juvenile court terminate family reunification services to Father. CWS reported that Father contacted Mother in violation of a temporary restraining order, which in turn violated the terms of his probation granted following his domestic violence conviction. As a result, Father was confined for 30 days in county jail. CWS also reported that Father did not have a stable and suitable residence because he lived with his brother who has a criminal record.

On January 24, 2008, the juvenile court terminated family reunification services to Father, but continued reunification services to Mother. On July 9, 2008, police officers arrested Mother for assault with a deadly weapon and for inflicting corporal injury upon Father. Mother and Father had resumed living together and engaged in domestic violence involving a knife. The court granted Mother five years of probation with a condition of 180 days of confinement in county jail. Upon learning of Mother's

arrest, conviction, and jail sentence, CWS recommended that the juvenile court terminate family reunification services to her.

On October 9, 2008, the juvenile court terminated services to Mother and set a permanent plan hearing. It also ordered CWS to prepare a section 366.21, subdivision (i) adoption assessment.

A. has lived with a foster family since birth and the family intends to adopt her. Recent medical examinations revealed that A. suffers from fetal alcohol syndrome and epilepsy.

Approximately five months later, Father filed a modification petition requesting family maintenance services and the return of A. to his custody and care. Father stated that he was participating in a domestic violence program, had obtained stable employment, and lived in suitable housing. The juvenile court denied the modification petition on February 26, 2009.

On March 10, 2009, the juvenile court held a permanent plan hearing. It received evidence of CWS reports and testimony from Father regarding the parental benefit exception of section 366.26, subdivision (c)(1)(B)(i). Father testified that he loved A. and was committed to her care.

The court decided that Father did not establish the parental benefit exception to adoption, and it concluded by clear and convincing evidence that A. is adoptable. It then terminated parental rights.

Father appeals and contends that the juvenile court erred by not finding the parental benefit exception to adoption.

DISCUSSION

Father argues that there is substantial evidence that he occupied a parental relationship with A. because he visited her as frequently as allowed and their visits were loving and positive. He points to case notes describing the visits and noting that he fed A., played with her, and changed her diapers. Father asserts that continuation of his relationship with his daughter promotes her well-being and outweighs the benefit she would obtain in a permanent adoptive home.

Section 366.26, subdivision (c)(1)(B) requires the juvenile court to terminate parental rights if it finds by clear and convincing evidence that a child is likely to be adopted, unless "[t]he court finds a compelling reason for determining that termination would be detrimental to the child" due to an enumerated statutory exception. The "beneficial parental relationship" exception of section 366.26, subdivision (c)(1)(B)(i), requires a showing of "regular visitation and contact" and "benefit" to the child from "continuing the relationship." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466 [discussing statutory exception].) "To meet the burden of proof, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.) Only in the "extraordinary case" can a parent establish the exception because the permanent plan hearing occurs after the court has repeatedly found the parent unable to meet the child's needs. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The exception requires proof of "a *parental* relationship," not merely a relationship that is "beneficial to some degree but does not meet the child's need for a parent." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th 1339, 1350.) The existence of a beneficial relationship is determined by the age of the child, the portion of the child's life spent in parental custody, the quality of interaction between parent and child, and the child's particular needs. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 689 [beneficial relationship exists where children in mother's care for substantial periods].)

In terminating parental rights, the juvenile court expressly found that Father's relationship with A. did not outweigh her need for stability in an adoptive home. Under any standard of review, the court's finding is proper because Father did not meet his burden of establishing the "extraordinary case" of the beneficial parental relationship exception. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th 1339, 1350.)

Father first visited A. when she was three months old, after paternity had been determined. The visits were twice weekly, except during Father's six-week incarceration for violating the terms of probation. Following the termination of family reunification services in January 2008, Father visited A. once a month. During the nearly

two-year dependency, A.'s foster parents provided her daily needs for food, shelter, and protection. A. has lived no part of her life in Father's custody and care. (Cf. *In re S.B.* (2008) 164 Cal.App.4th 289, 298-301 [father was primary caregiver for three years prior to dependency].) Her foster parents have stood in a parental role to her and have tended to her special medical and emotional needs. Father has not established "a compelling reason" that termination of his parental rights would be detrimental to A. (§ 366.26, subd. (c)(1)(B).)

The judgment is affirmed.

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GILBERT, P.J.

We concur:

COFFEE, J.

PERREN, J.

James E. Herman, Judge
Superior Court County of Santa Barbara

Maureen L. Keaney, under appointment by the Court of Appeal, for
Defendant and Appellant.

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Plaintiff and Respondent.